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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/544,101	08/02/2005	Konrad Tetenborg	P70652US0	2274
136 7590 07/23/2009 JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004				
EXAMINER DESAI, HEMANT				
ART UNIT		PAPER NUMBER		
3721				
MAIL DATE		DELIVERY MODE		
07/23/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/544,101

**Applicant(s)**

TETENBORG ET AL.

**Examiner**

Hemant M. Desai

**Art Unit**

3721

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 10 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10 and 22-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitao (6195964) and Aubry et al. (4708705) and further in view Sengewald (4889523).

Kitao discloses process for manufacturing a bag from polymer film material, having four walls (7, 9, fig. 3a), cutting the web into four film segments (7,9) and sealing the connected film segments so as to form at least one sealed end of the bag (fig. 3b). Note that cutting the web into four segments is inherent part of Kitao's method of making the bag

Kitao by , as mentioned above, disclose the bag with four walls with four seams except for forming one part of the four seams being formed by a joining process in which addition extruded joining material is applied. However, Aubry et al. discloses that it is known in the process of making bag by a joining process in which addition extruded joining material is applied (see col. 2, lines 7-14, lines 47-51; col. 3, lines 20-23, 54-65; figs. 4-6) to reinforce the bag at its critical points such as the seams. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to join the seams for forming the bags in the process of Kitao for manufacturing

the bag in by joining process in which addition extruded joining material is applied as taught by Aubry et al. to reinforce the bag at its critical points such as the seams.

The process of Kitao as modified by Aubry et al., as mentioned above, disclose the bag with four walls with four seams which are join by the process in which addition extruded joining material is applied, except for the material required for forming the bags is fed in the form of a single film web that is wound up on a roll. Sengewald et al. disclose that it is known in the bag making art, wherein the bag is made of four walls (2a, 2b, 15, fig. 3) to provide the material required for forming the bags is fed in the form of a single film web that is wound up on a roll (11, fig. 3) to the unwinding station to make the manufacturing simpler and thus the manufacturing of the flexible container (bag) more efficient. Thus, it would have been obvious to one of ordinary skill in the art to provide the material required for forming the bags is fed in the form of a single film web that is wound up on a roll as taught in Sengewald reference, to improve the process for manufacturing a bag of Kitao for the predictable result of feeding the web material required for forming the bag in a simple and more efficient manner. **KSR Int'l v. Teleflex Inc., 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385, 1396 (2007).**

Regarding claim 2, Kitao discloses that the bag comprises side gussets (see fig. 1).

Regarding claim 3, Kitao discloses that the bottom of the bag is formed using transverse sealing.

Regarding claim 4, Kitao discloses that the bottom of the bag is formed exclusively by a squeezing process and a transverse sealing process.

Regarding claim 5, Kitao discloses that the bottom formation of the bag is followed by a filling process of the bags.

Regarding claim 6, Kitao discloses that the top end of the bag is also sealed using transverse sealing (12, fig. 6b).

Regarding claim 7, Kitao discloses that the bag is formed and filled partly in a form, fill and seal machine.

Regarding claim 10, the modified process of manufacturing the bag of Kitao teaches that a conveying direction of the four film segments to joining station defines a longitudinal axis of the formed film tube (see figs. 7 and 9 of Sengewald).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitao (6195964), Aubry et al. (4708705) and Sengewald and further in view of British Patent (1057264).

The modified bag of Kitao, as explained above, meets all the limitations of claim 22, except for the tubular film is in the form of roll. However, British Patent ('264) discloses that it is known to provide tubular film in the form of roll (see fig. 1) for

convenient storage, shipment and subsequent use (see page 2, lines 101-105).

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the tubular film of Kitao in the form of roll as taught by British Patent ('264) for convenient storage, shipment and subsequent use.

Regarding claim 12, Kitao discloses that the two of the four side walls have side gussets.

Regarding claim 13, Kitao discloses that the front sides of the side-gusseted film tube lie over one another.

Regarding claim 14, Kitao discloses that the side gussets are staved toward the direction of the tube.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 22-25, alternatively, are rejected under 35 U.S.C. 102(b) as being anticipated by British Patent (1057264).

British Patent ('264) discloses a tubular film roll (see fig. 1) comprising a film tube that includes four side walls (front, back and two gussets).

The product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. See MPEP 2113. The product-by-process claims 22-25 results in no structure different from the British Patent ('264).

Regarding claim 12, British Patent discloses that the walls are gusseted (see page 2, lines 128-1300).

Regarding claim 13, British Patent discloses that discloses that the front sides of the side-gusseted film tube lie over one another.

Regarding claim 14, British Patent discloses that the side gussets are staved toward the direction of the tube.

### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1-7, 10 and 22-25 have been considered but are moot in view of the new ground(s) of rejection.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M. Desai whose telephone number is (571) 272-4458. The examiner can normally be reached on 6:30 AM-5:00 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hemant M Desai/  
Primary Examiner, Art Unit 3721